

EXHIBIT E

O'Brien, Reagan

May 8, 2007

Dallas, TX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - -

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION
PRICE LITIGATION : 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO :
State of Texas ex rel. :
Ven-A-Care of the Florida :
Keys, Inc. vs. Abbott :
Laboratories, et al. :
Case No. D-1-GV-04-001286 :

ORAL VIDEOTAPED DEPOSITION

REAGAN O'BRIEN

MAY 8, 2007

ORAL VIDEOTAPED DEPOSITION OF REAGAN O'BRIEN,
produced as a witness at the instance of the

Henderson Legal Services
202-220-4158

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<p style="text-align: right;">Page 2</p> <p>1 Defendant, and duly sworn, was taken in the 2 above-styled and numbered cause on the 8th day of 3 May, 2007, from 9:03 a.m. to 2:49 p.m., before Tim 4 Fails, CSR in and for the State of Texas, reported 5 stenographically, at the offices of Jones Day, 2727 6 N. Harwood Street, Dallas, Texas, pursuant to the 7 Texas Rules of Civil Procedure and the provisions 8 stated on the record or attached hereto. 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">A P P E A R A N C E S (continued)</p> <p>1 2 3 FOR ABBOTT LABORATORIES: 4 Mr. Louis P. Gabel 5 JONES DAY 6 51 Louisiana Avenue, N.W. 7 Washington D.C. 20001-2113 8 9 Ms. Tara Fumerton (Via Telephone) 10 JONES DAY 11 77 Wacker Drive 12 Chicago, Illinois 60601 13 14 15 16 17 18 19 20 21 22</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S 2 3 FOR THE STATE OF TEXAS: 4 Ms. Diane S. Jacobs 5 ATTORNEY GENERAL OF TEXAS 6 Assistant Attorney General 7 P.O. Box 12548 8 Austin, Texas 78711-2548 9 10 11 FOR VEN-A-CARE OF THE FLORIDA KEYS, INC.: 12 Mr. John E. Clark 13 GOODE, CASSEB, JONES, RIKLIN, CHOATE & WATSON 14 2122 North Main Avenue 15 P.O. Box 120480 16 San Antonio, Texas 78212-9680 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">A P P E A R A N C E S (continued)</p> <p>1 2 3 FOR UNITED STATES DEPARTMENT OF JUSTICE: 4 Ms. Ana Maria Martinez 5 UNITED STATES DEPARTMENT OF JUSTICE 6 Assistant United States Attorney 7 Southern District of Florida 8 99 N.E. 4th Street 9 Miami, Florida 33132 10 11 Mr. Justin Draycott 12 UNITED STATES DEPARTMENT OF JUSTICE 13 601 D. Street, N.W. 14 Box 261, Ben Franklin Station 15 Washington, D.C. 20004 16 17 18 19 20 21 22</p>

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4	Mr. Kendall R. Walker	4	Examination by Mr. Gabel 12
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6	Associate General Counsel Law Department	6	
7	1-20 at Alpine Road AA-270	7	EXHIBITS INDEX
8	Columbia, South Carolina 29219	8	NUMBER DESCRIPTION PAGE
9		9	Exhibit Abbott 166 Plaintiffs' 1st Amended 38
10		10	Notice of Intention to
11	FOR ROXANE LABORATORIES AND THE BOEHRINGER ENTITIES:	11	Take Oral Deposition
12	Mr. Jared Heck (Via Telephone)	12	Exhibit Abbott 167 Letter dated March 27,
13	KIRKLAND & ELLIS, L.L.P.	13	2003 from Beth A. O'Connor
14	200 E. Randolph Drive	14	to TrailBlazer Health
15	Chicago, Illinois 60601	15	Enterprises, LLC with
16		16	enclosures 69
17		17	Exhibit Abbott 168 Letter dated March 26, 2003
18		18	from Kelly P. Glauberman to
19		19	TrailBlazer Health Enterprises,
20		20	LLC c/o CT Corporation System
21		21	with enclosures 69
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1	APPEARANCES (continued)	1	EXHIBITS INDEX (Continued)
2		2	NUMBER DESCRIPTION PAGE
3	FOR DEY:	3	Exhibit Abbott 169 Collection of organization
4	Mr. Cliff Katz (Via Telephone)	4	charts, AWQ001-1300 through
5	KELLEY, DRYE & WARREN, L.L.P.	5	1318 95
6	101 Park Avenue	6	Exhibit Abbott 170 TrailBlazer Staff Involved
7	New York, New York 10178	7	In Document Production 126
8		8	Exhibit Abbott 171 Memorandum dated November 18,
9	ALSO PRESENT:	9	2003 from Gregory G. Carson
10	Mr. Anthony Marlar (Videographer)	10	to All Fiscal Intermediaries,
11	Mr. Troy Barsky, Law Office of General Counsel	11	All Carriers, All Durable
12	for CMS (Via Telephone)	12	Medical Equipment Regional 150
13		13	Carriers, HHD043-0003 and 0004
14		14	Exhibit Abbott 172 Memorandum dated August 14, 2003
15		15	from Gregory G. Carson to All
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18		18	Exhibit Abbott 173 Response by the United States to
19		19	Abbotts First Set of Requests for
20		20	Production of Documents and
21		21	Tangible Things to the United
22		22	States 180

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<p>1 A. -- falls within the purview of the 2 department. 3 Q. So each department would -- 4 A. Would maintain those records. 5 Q. Was there any documentation sent to 6 TrailBlazer employees informing them to halt the -- 7 the destruction policies under CMS's guidelines for 8 document retention or destruction? 9 MS. MARTINEZ: Objection to form. 10 A. The department would have communicated 11 that within their own areas. 12 Q. (By Mr. Gabel) Would they have done so 13 by e-mail? 14 A. Possibly. I can't speak to that. 15 Q. Do you know if there is any 16 documentation showing TrailBlazer's communications 17 to its employees regarding the retention of 18 documents in connection with Exhibit Abbott 171? 19 A. Not to my knowledge. 20 Q. With respect to offsite storage, do you 21 know if any efforts were made to retain documents 22 in connection with Exhibit Abbott 171?</p>	<p>1 MS. MARTINEZ: Objection to form. 2 A. Not to my knowledge. 3 Q. (By Mr. Gabel) And you see in the final 4 paragraph it mentions Troy Barsky of health and 5 human services office of general counsel. 6 Does that refresh your recollection 7 on whether he was the individual who was in contact 8 with TrailBlazer regarding the 2003 subpoenas? 9 MS. MARTINEZ: Objection to form. 10 MR. WALKER: Same objection. 11 A. I personally would not have been in 12 contact with him, so I can't speak to that. 13 Q. (By Mr. Gabel) Okay. I'm going to mark 14 Exhibit Abbott 172. And that is Bates No. 15 HHD043-0001. It's an August 14th, 2003 memo. 16 (Exhibit Abbott 172 marked) 17 Q. (By Mr. Gabel) It's a memo from the 18 director of Medicare contract management group from 19 the center for Medicare management to all fiscal 20 intermediaries and all carriers. 21 Have you seen this document before? 22 A. No.</p>
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<p>1 A. This information would have been 2 communicated throughout the department in regards 3 to on-site and offsite storage. 4 Q. Do you know what efforts individuals in 5 each department took to ensure the retention of 6 documents in offsite storage locations? 7 A. Each individual I -- I can assume that 8 they would go by their department management 9 telling them not to destroy documents at CMS's 10 requests. 11 Q. And was -- do you know if that was 12 communicated to Iron Mountain? 13 A. I -- I don't have an awareness of that. 14 Q. Do you know if any documents exist 15 showing communication to Iron Mountain with respect 16 to the retention of documents in connection with 17 Exhibit Abbott 171? 18 A. Not to my knowledge. 19 Q. Do you know if any efforts were taken at 20 Iron Mountain to not destroy any documents in 21 connection with the instructions set forth in 22 Exhibit Abbott 171?</p>	<p>1 Q. Not in 2004 or 2007? 2 A. No. 3 Q. Okay. Set that aside. 4 Back to Exhibit Abbott 171, were 5 there any other instructions subsequent to November 6 2003 from CMS to TrailBlazer regarding the 7 retention of documents in connection with 8 prescription drug reimbursement? 9 A. In 2003? 10 Q. After the November 2003 notice, was 11 there a follow-up -- 12 MS. MARTINEZ: Objection -- 13 Q. (By Mr. Gabel) -- notice? 14 MS. MARTINEZ: -- to form. 15 A. My understanding there were additional 16 requests in January and February of 2004 in which 17 related to this document and retention policies. 18 Q. (By Mr. Gabel) Were there additional 19 instructions regarding retention? 20 A. The request -- 21 MS. MARTINEZ: I'm going to object 22 to form.</p>

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<p style="text-align: right;">Page 158</p> <p>1 MR. WALKER: Same objection.</p> <p>2 MS. MARTINEZ: You know, on your CMS</p> <p>3 guidelines the -- the carrier retains all kind of</p> <p>4 documents and has retention policies and all that</p> <p>5 stuff. I believe that you're trying to ask about</p> <p>6 preservation.</p> <p>7 MR. GABEL: I --</p> <p>8 MS. MARTINEZ: I'm trying</p> <p>9 distinguish because retention could comply to</p> <p>10 anything. I'm just saying --</p> <p>11 Q. (By Mr. Gabel) Yeah. When I say</p> <p>12 retention, I mean preserving documents, i.e., not</p> <p>13 destroying documents that may be relevant to the</p> <p>14 drug reimbursement cases.</p> <p>15 Do you understand --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- that? I just want --</p> <p>18 A. Yes.</p> <p>19 Q. -- to make sure that it's clear.</p> <p>20 Were there any other instructions to</p> <p>21 preserve or retain documents that were related to</p> <p>22 drug reimbursement?</p>	<p style="text-align: right;">Page 160</p> <p>1 not to your knowledge -- sorry. Strike all of</p> <p>2 that.</p> <p>3 Is that correct with respect to CMS</p> <p>4 instructions regarding --</p> <p>5 MS. MARTINEZ: Objection --</p> <p>6 Q. (By Mr. Gabel) -- preservation of</p> <p>7 documents in connection with the drug reimbursement</p> <p>8 cases?</p> <p>9 A. Are you asking that we did not receive</p> <p>10 any others?</p> <p>11 Q. Yes.</p> <p>12 A. To my knowledge --</p> <p>13 Q. Okay.</p> <p>14 A. -- that is correct.</p> <p>15 Q. Any internally generated instructions</p> <p>16 from TrailBlazer regarding the preservation of</p> <p>17 documents related to --</p> <p>18 A. Not to my knowledge.</p> <p>19 MS. MARTINEZ: Counsel, let me just</p> <p>20 clarify. Between the two of you, you may not be</p> <p>21 understanding what you mean. If you mean also the</p> <p>22 Abbott case, are you trying to extend it to the</p>
<p style="text-align: right;">Page 159</p> <p>1 A. The subsequent requests in 2004 were</p> <p>2 related to the 2003 requests. They were an</p> <p>3 exception of that.</p> <p>4 Q. Any other preservation instructions that</p> <p>5 have been issued since 2004?</p> <p>6 A. Not to --</p> <p>7 MR. WALKER: Object to --</p> <p>8 A. -- my knowledge.</p> <p>9 MR. WALKER: -- the form.</p> <p>10 MS. MARTINEZ: Objection to --</p> <p>11 Q. (By Mr. Gabel) I'm sorry.</p> <p>12 MS. MARTINEZ: -- the form.</p> <p>13 Q. (By Mr. Gabel) What was your answer?</p> <p>14 A. Not to my knowledge.</p> <p>15 MR. WALKER: You mean ever or just</p> <p>16 with reference to 2004?</p> <p>17 Q. (By Mr. Gabel) With reference to drug</p> <p>18 reimbursement and the litigation involving drug</p> <p>19 reimbursement.</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Thank you.</p> <p>22 And is that correct that you -- that</p>	<p style="text-align: right;">Page 161</p> <p>1 present and the 2007 production in two --</p> <p>2 Q. (By Mr. Gabel) I'm asking --</p> <p>3 MS. MARTINEZ: -- directions?</p> <p>4 Q. (By Mr. Gabel) -- for all cases</p> <p>5 involving --</p> <p>6 MR. WALKER: Anything related to</p> <p>7 drugs?</p> <p>8 Q. (By Mr. Gabel) -- the drug reimbursement</p> <p>9 -- the allocations of over-reimbursement for drugs.</p> <p>10 So if that changes your answer,</p> <p>11 whether it is the Lupron case, the AWP MDL case,</p> <p>12 the Ven-A-Care case against Abbott that the</p> <p>13 government has intervened in --</p> <p>14 MS. MARTINEZ: Because they received</p> <p>15 additional -- once you get into the 2007 --</p> <p>16 MR. GABEL: Okay.</p> <p>17 MS. MARTINEZ: -- production she</p> <p>18 might have more information about that. I'm just</p> <p>19 not sure if --</p> <p>20 Q. (By Mr. Gabel) Okay. Well, with respect</p> <p>21 to any case involving allegations of</p> <p>22 over-reimbursement for prescription drugs, have</p>

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<p>1 there been any other directions to preserve 2 documents after February of 2004? 3 A. Yes, January 2007. 4 Q. Anything between February of 2004 and 5 January of 2007? 6 A. Not to my knowledge. 7 Q. Any internally created directions to 8 preserve documents in connection with the cases 9 alleging over-reimbursement for prescription drugs, 10 any internally created instructions by TrailBlazer? 11 A. Not to my knowledge. 12 Q. Did you have any commune -- 13 communications with the Texas Attorney General's 14 Office relating to the preservation of documents in 15 connection with the cases alleging 16 over-reimbursement for drugs? 17 A. Not that I saw. 18 Q. Did anyone within TrailBlazer determine 19 if the documents that were collected were protected 20 by any privileges of any sort? 21 MR. WALKER: Object to the form. 22 MS. MARTINEZ: And I object to the</p>	<p>1 independently decide to hold back any documents -- 2 A. No. 3 Q. -- based on privilege? 4 Do you know if CMS or the Department 5 of Justice decided to withhold documents based upon 6 privilege? 7 A. Uh-huh. 8 MR. WALKER: Objection. That goes 9 into the directions that TrailBlazer would have 10 received from CMS. 11 MS. MARTINEZ: Right. And I don't 12 see what -- 13 MR. GABEL: Well, just the -- 14 MS. MARTINEZ: -- the point of 15 asking the witness if you have a privilege log. 16 MR. GABEL: I want to know if 17 they're reflected on the privilege log. 18 MS. MARTINEZ: Well -- 19 MR. GABEL: And so I mean -- 20 MS. MARTINEZ: -- I mean, if 21 attorneys gave you a privilege log -- 22 MR. GABEL: Yeah. I --</p>
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<p>1 form, too. 2 A. In 2004? 3 Q. (By Mr. Gabel) In 2004. 4 MR. WALKER: Same objection. 5 A. I -- I can't speak to that. 6 Q. (By Mr. Gabel) Did you or anyone, to 7 your knowledge, withhold documents based upon a 8 determination that the document was privileged in 9 2004? 10 A. From the files the only thing I can 11 ascertain is there were some documents held back 12 because of personal health information. 13 Q. Okay. What about with respect to 2007, 14 were any documents withheld by you or anyone, to 15 your knowledge, at TrailBlazer based upon a 16 determination that the document was privileged? 17 A. I know there were some documents that we 18 discussed with counsel. 19 MS. MARTINEZ: Do not discuss the 20 content of any communication with counsel, okay? 21 THE WITNESS: Okay. Okay. 22 Q. (By Mr. Gabel) Did TrailBlazer</p>	<p>1 MS. MARTINEZ: -- take the 2 representation that those are the documents 3 withheld, but -- 4 MR. GABEL: I mean, do we -- 5 MS. MARTINEZ: -- I mean -- 6 MR. GABEL: -- do we -- 7 MS. MARTINEZ: -- how could she -- 8 MR. GABEL: I guess -- 9 MS. MARTINEZ: How could she look 10 over the shoulder of a lawyer and tell you whether 11 or not a lawyer did their job? I mean -- 12 MR. GABEL: I wanted to know who did 13 the job. 14 MS. MARTINEZ: Okay. The lawyers 15 did. 16 MR. GABEL: Was it TrailBlazer or 17 was it CMS or DOJ? 18 Q. (By Mr. Gabel) And that's -- from your 19 answer, I understand that TrailBlazer did not 20 independently withhold any documents based upon 21 privilege? 22 A. Correct.</p>

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